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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

No. 77-6066

VINCENT X. LEE,

Petitioner,

-vs-

STATE OF MISSOURI,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE MISSOURI SUPREME COURT

VINCENT X. LEE,
Petitioner,

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I N D E X

	Page
Table of Citations	1
Opinion Below	2
Jurisdiction	2
Question Presented	2
Constitutional Provisions Involved	3
Statement	3
How Federal Questions are Presented	3
Reasons For Granting The Writ	5
Conclusion	9
Appendix	10

TABLE OF CITATIONS

CASES:

Taylor v. Louisiana, 412 U.S. (1975)

Hoyt v. Florida, 368 U.S. 57, 7 L.Ed.2d 118, 82 S.Ct. 159 (1961)

State v. Billy Duren, 556 S.W.2d 11, 24, n.4 (1977)

State v. Gethers, 227 S.E.2d 832 (Ga.App.1976)

Robinson v. Kimbrough, 540 F.2d 1264 (5th Cir.1976)

New York Judiciary Law 549(7)

STATUTES:

Sixth Amendment, United States Constitution

Fourteenth Amendment, United States Constitution

Article I, 22(b), Missouri Constitution

§497.130, Missouri Revised Statutes

New York Judiciary Law 549(7)

Conn.Gen.Stat.Rev. §51-218, 219

Ga.Code Ann.§ 59-112(6)

La.Stat.Ann.§ 13-3055

Okla.Stat.Ann. Title 38§28

Rhode Island Gen.Laws Ann.§9-9-11

Utah Code Ann.§78-46-10(14)

PETITION FOR A WRIT OF CERTIORARI TO THE MISSOURI SUPREME COURT

Petitioner, VINCENT X. LEE, prays that a writ of certiorari issue to review the judgment and opinion of the Missouri Supreme Court entered in the above-entitled case on October 15, 1977.

OPINION BELOW

The opinion and decision of the Missouri Supreme Court is reported at *556 S.W.2d, 25.* A copy of the opinion appears in Appendix A attached hereto.

JURISDICTION

The judgment of the Missouri Supreme Court (Appendix A) was originally entered on September 27, 1977. Thereafter, on September 29, 1977, a timely motion for rehearing was filed. see, Rule 84.17, Missouri Rules of Court. Petitioner's motion for rehearing was overruled by the Missouri Supreme Court on October 11, 1977. By the aforesaid denial of the motion for rehearing, the opinion and decision of September 27, 1977 became the final judgment of the highest court in the State of Missouri.

The jurisdiction of this court is invoked under 28 U.S.C. §1257(3).

QUESTION PRESENTED

I

WHETHER MISSOURI'S STATUTORY AND CONSTITUTIONAL SCHEME FOR THE SELECTION OF PETIT JURORS -- WHICH GRANTS WOMEN AN AUTOMATIC EXEMPTION BASED SOLELY ON SEX -- DENIED PETITIONER HIS RIGHT TO TRIAL BY JURY AND DUE PROCESS OF LAW AS MANDATED AND INTERPRETED BY THIS COURT'S OPINION IN *Taylor v. Louisiana, 412 U.S. (1975).*

CONSTITUTIONAL PROVISION INVOLVED

This case involves the Sixth Amendment to the United States Constitution and the Due Process Clause of the Fourteenth Amendment to the United States Constitution:

Sixth Amendment

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed,. . ."

Fourteenth Amendment

> ". . . No State shall make or enforce any law which shall abridge theprivileges or immunities of citizens of the United States' nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction of the equal protection of the laws."

STATEMENT

Petitioner, VINCENT X. LEE, was charged by indictment with two counts of Murder, First Degree and two counts of Robbery, First Degree. Jury trial was held in the Jackson County Circuit Court (Meyers,J.) in Kansas City. Verdicts of guilt were returned as to each count and Petitioner was sentenced to four terms of life confinement in the Missouri Division of Corrections.

HOW FEDERAL QUESTIONS ARE PRESENTED

1. Prior to trial, Petitioner filed a motion to quash the petit jury panel on the basis that women were systematically excluded from jury service. A hearing was held: John Fitzgerald, Jackson County Jury Commissioner, testified that potential jurors are randomly selected from the Jackson County voter registration lists; these persons are sent questionnaires to determine their eligibility for jury service. By statute, this questionnaire prominently states:

"TO WOMEN:

The Constitution permits women to elect to serve or not to serve as jurywomen. Any woman who elects not to serve will fill out this paragraph and mail this questionnaire to the jury commissioner at once. It will not be necessary to answer the other questions.

I elect not to perform jury service."

See Appendix 11, Exhibit 1. Questionnaires returned showing no exemption were placed in the jury wheel. Evidence was received that the jury wheel was 29.1% female. Each week, names are randomly selected for jury service; these persons are then sent summons for jury service. The summons reads:

"Women, if you do not wish to serve, return this summons to the Judge named on the reverse side as quickly as possible."

See Appendix 2, Exhibit 2. The Jury Commissioner also testified that if a woman failed to respond to the summons, she was deemed to have exercised her option not to serve. Evidence was also received concerning the number of women appearing for jury service prior to Petitioner's trial. That evidence is as follows: June, 1975 - 15.9% women; July, 1975 - 15.1% women; August, 1975 - 13% women; September, 1975 - 13.7% women; October, 1975 - 10.9% women; January, 1976 - 12.3% women; February, 1976 - 17.6% women; March, 1976 - 15.5% women. Petitioner's panel of ninety (90) had ten (10) women (11.1%) and his jury of twelve was all male. Census data was also received showing Jackson County, Missouri to be 54% women.

At the close of Petitioner's presentation, the State produced no evidence and the motion to quash was overruled.

2. Subsequent to his trial, Petitioner filed a timely motion for new trial alleging the instant allegation. A timely appeal was prosecuted to the Missouri Supreme Court which held consolidated arguments on the cases *State of Missouri vs. Billy Duren; State of Missouri vs. Eugene Minor, State of Missouri vs. Emerson E. Harlin,* and *State of Missouri v. Vincent X. Lee* (petitions for writs of certiorari on these cases are being filed concurrently herewith). The opinion affirming Petitioner's conviction became final on October 11, 1977. The question presented herein was raised and argued before the trial court and the Missouri Supreme Court.

REASONS FOR GRANTING THE WRIT

The opinion and decision of the Missouri Supreme Court in the instant case is in direct conflict with past decision of this Court, various federal courts of appeals and several state high courts. Specifically, Petitioner contends the instant opinion is in conflict with *Taylor vs. Louisiana, 419 U.S. 522 (1975)* and thus, cannot stand. *Taylor* held Article VII, Section 41 of the Louisiana Constitution and Article 402 of the Louisiana Code of Criminal Procedure (since repealed) violative of *Taylor's* due process rights guaranteed by the XIV Amendment to the United States Constitution.

The Louisiana law is reproduced here for the convenience of the Court:

Article VII, Louisiana Constitution

§41. Selection of jurors; women jurors; trial by judge; trial by jury.

The Legislature shall provide for the selection and drawing of competent and intelligent jurors for the trial of civil and criminal cases; provided, however, that no woman shall be drawn for jury service unless she shall have previously filed with the clerk of the District Court a written declaration of her desire to be subject to such service. All cases in which the punishment may not be at hard labor shall, until otherwise provided by law, be tried by the judge without a jury. Cases, in which the punishement may be at hard labor, shall be tried by a jury of five, all of whom must concur to render a verdict; cases, in which the punishment is necessarily at hard labor, by a jury of twelve, nine of whom must concur to render a verdict; cases in which the punishment may be capital, by a jury of twelve, all of whom must concur to render a verdict.

Louisiana Code of Criminal Procedure

Article 402. Service of women as jurors.

A woman shall not be selected for jury service unless she has previously filed with the clerk of court of the parish in which she resides a written declaration of her desire to be subject to jury service.

The United States Supreme Court in *Taylor* re-examined the question of automatic exclusion of women from the juries previously decided by that Court in *Hoyt v. Florida, 368 U.S. 57, 7 L.Ed.2d 118, 82 S.Ct. 159 (1961)* and they reached a different result. Accordingly, the Court stated:

"Accepting as we do however, the view that the VI Amendment affords the Defendant in a criminal trial the opportunity to have the jury drawn from venires representative of the community, we think it is no longer tenable to hold that women as a class may be excluded or given automatic exemptions based solely on sex if the consequences are that criminal jury venires are almost totally male."

(42 L.Ed.2d 690 at 702) [emphasis added]

The question presented herein then whether Missouri offers an "automatic exemption based solely on sex" and if, "the consequences are that criminal jury venires are almost totally male."

The Missouri Constitution, Article I, Section 22(b) states: "No citizen shall be disqualified from jury service because of sex, but the court shall excuse any woman who requests exemption therefrom before being sworn as a juror." This Article is implemented by Section 497.130, Missouri Revised Statutes (1974), which section allows women to "elect to serve or not to serve as jury women."

When placed side by side and examined, the Missouri system and the Louisiana system (later changed) both offer an absolute exemption to jury service based strictly upon gender. The difference being only that in Louisiana the woman must affirmatively opt for service while her Missouri sister must affirmatively choose not to serve.

The Appellant's argument is much better stated by the United States Supreme Court's final paragraph in the *Taylor* opinion:

". . . but the jury wheels, pools of names, panels, or venires from which juries are drawn must not systematically exclude distinctive groups in the community and thereby fail to be reasonably representative thereof."

The term "reasonably representative thereof" points out the failing of the panel to which the Petitioner objected. It cannot be said that ten (10) women on a panel of ninety (90) is "reasonably representative" nor does that panel constitute a "cross-section of the community."

Petitioner concludes that "(t)he States remain free to prescribe relevant qualifications for their jurors and to provide reasonable exemptions. . ." *Taylor v. Louisiana, at 538.* Petitioner, however, does not believe that a blanket exemption for women is a reasonable exemption. Indeed, as pointed by Mr. Justice Seiler in his dissenting opinion in *State v. Billy Duren, 556 S.W.2d 11, 24, n.4 (1977):*

"The federal court (the United States District Court for the Western District of Missouri) provides for excuse on request by a woman charged with care of minor children without adequate domestic help."

Petitioner maintains that this is a reasonable exemption for women and would not serve to deny an accused his constitutional right to a representative jury: in the federal court in Kansas City, 53% of the persons on jury wheel are women and 39.8% of the actual jurors chosen were women. *556 S.W.2d at 84.* This data can be contrasted with the Missouri courts: 29% of the persons on the wheel are women; seldom over 15% of the persons appearing for jury service are women; and often, as in the case-at-bar, juries are all male.

Since *Taylor*, several states have been faced with challenges to exemptions to women. All, except Missouri, have changed the exemption by either statute or court decision, see, e.g. *State v. Gethers, 227 S.E.2d 832 (Ga.App.1976); Robinson v. Kimbrough, 540 F.2d 1264 (5th Cir.1976); New York Judiciary Law 549(7); Conn. Gen.Stat.Rev. §51-218, 219; Ga.Code Ann. §59-112(6); La.Stat.Ann. §13-3055; Okla.Stat.Ann. Title 38 §28; Rhode Island Gen.Laws Ann. §9-9-11; Utah Code Ann.§78-46-10(14).* Missouri remains the only state with an automatic exemption for women. Further, this exemption causes gross underrepresentation of women on jury panels. (See attached exhibits as to the women appearing for jury service). The instant opinion cannot stand as a correct interpretation of this Court's opinion in *Taylor*. Unlike the Missouri Supreme Court, Petitioner does not believe *Taylor* stands for the proposition that any percentages of women on jury panels, higher than those found in *Taylor*, is constitutionally permissible; instead *Taylor* condemns jury mechanisms which deny an accused his right to a jury drawn from a reasonable cross-section of society. The Missouri jury selection system is of such a breed: Petitiner's panel (10% women) cannot be considered as representative of society.

Accordingly, a Writ of Certiorari should issue to review the opinion of the Missouri Supreme Court affirming Petitioner's conviction.

CONCLUSION

WHEREFORE, Petitioner respectfully requests this Court to issue a Writ of Certiorari to the Missouri Supreme Court.

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A copy of the above and foregoing was mailed, postage prepaid, on this the 16th day of January, 1978 to Attorney General John Ashcroft, Office of the Attorney General, Supreme Court Building, Jefferson City, Missouri 65101.

LEE M. NATION

JAMES W. FLETCHER